

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ORDER SETTING SENTENCING DATE

On May 22, 2017, the Court accepted the guilty plea of Defendant James Ayers as set forth in his Plea Agreement (ECF Nos. 267 & 268). Accordingly, the Court convened on October 24, 2017, to sentence Defendant (ECF No. 436). But upon the oral motion of the Assistant United States Attorney then present, the Court postponed the sentencing. Counsel explained that the defendant-appellant in *United States v. Verwiebe*, 874 F.3d 258 (6th Cir. 2017), was pursuing a petition for an *en banc* rehearing of the decision made in *Verwiebe* by a panel of the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”). In *Verwiebe*, the Sixth Circuit panel resolved a particular issue relevant to Defendant’s sentencing. As a decision by the Sixth Circuit to reconsider *en banc* the panel’s earlier decision would have been pertinent to Defendant’s sentencing, the Court agreed to delay the sentencing. But in doing so, the Court ordered counsel to give notice of when the Sixth Circuit had ruled on the petition for a rehearing.

The Court has now learned that the Sixth Circuit denied the petition for a rehearing on January 3, 2018. Yet, despite the passage of more than four months, counsel failed to notify the

Court of the Sixth Circuit's action as instructed. The Court is also aware that a further petition for writ of certiorari to the Supreme Court of the United States remains pending in *Verwiebe*. But this fact does not negate counsels' failure to comply with the Court's instructions.

The Court intends to proceed with sentencing in this case. Therefore, this matter is set for sentencing at **10 a.m. on Monday, June 25, 2018.**

IT IS SO ORDERED.

s/ **S. Thomas Anderson**
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: May 22, 2018.